XI-HC—78

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH BILASPUR

CRIMINAL APPEAL NO. 619 of 2001

DIVISION BENCH **HON'BLE SHRI L.C. BHADOO, &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

APPELLANT : Maadvi Hadmo S/o. Dashru, aged 32 years, resident of village Bagmundia, Paneda, P.S.Gidam, District Dantewara, Bastar (C.G.)

Versus

RESPONDENT : State of Chhattisgarh, Through Police Station -Gidam, District Dantewara, Bastar, Chhattisgarh.

Present

Mr. Vishwanath Prasad Gupta, counsel for the accused/appellant.

Mr. D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

ORAL JUDGMENT
(27th June 2007)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 21st May 2001 passed by learned 4th Additional Sessions Judge, Bastar at Jagdalpur in S.T.No.426/00

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

whereby learned Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the IPC, for committing the murder of one Maadvi Hidme Maadia, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for six months.

2. Case of the prosecution, in brief, is that on 9.05.2000, Maadvi Mangdu (husband of the deceased) lodged First Information Report (Ex.P-1) in the police station Gidam to the effect that the wife of accused Maadvi Hadmo was ill and he was suspecting that Maadvi Hidme (since deceased), was practicing witchcraft. Today at about 12.00 noon, all of a sudden accused came to his house carrying axe in his hand. At that time he was sleeping in the *parchhi* of his house, accused/appellant attacked his wife with the axe and was running away whereupon she raised cries. At the same time, his son Maadvi Budhram came after fetching water. His daughter in law Maadvi Somdi was also standing outside the house. The incident was seen by her. In the meantime his son went inside the house and saw that his mother was dead. She was lying on the ground in a pool of blood. There was injury of axe on her left ear, left eye, left side nose and elbow of the right hand. He informed his neighbour Maadvi Sanko and Patel of the village Bemo Bomda that accused Maadvi Hadmo has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

attacked his wife Maadvi Hidme with axe and ran away. Receiving this report, the Investigating Officer left for the scene of occurrence, after giving notice Ex.P-3 to the Panchas, prepared inquest Ex.P-4 on the body of Maadvi Hidme. Body of Maadvi Hidme was sent for post mortem examination to Primary Health Centre, Gidam vide Ex.P-5 where Dr. P.S.Komre conducted the post mortem and prepared post mortem report Ex.P-5A. He opined that cause of death was due to massive Hemorrhage as a result of injury Nos. 1,3 and 4. These injuries were fatal in nature caused by hard and sharp object and death was homicidal in nature.

3. After completion of investigation charge sheet was filed in the Court of Chief Judicial Magistrate, Dantewara who in turn committed the case to the Sessions Judge, Jagdalpur from where the learned Fourth Additional Sessions Judge, Bastar at Jagdalpur received the case on transfer for trial.

4. Prosecution in order to establish the charge against accused/appellant examined six witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence.

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आदेश पत्रक (पूर्वानुबद्ध)

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5. Learned Additional Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.

6. We have heard Mr. Vishwanath Prasad Gupta, counsel appearing on behalf of the accused/appellant and Mr. D.K.Gwalre, Additional Public Prosecutor for the State/respondent.

7. Having heard counsel for the parties we have perused the evidence of P.W.-1 Maadvi Somdi, P.W.-2 Maadvi Budhram and P.W.-4 Maadvi Mangdu husband of the deceased. Based on their evidence, the trial Court has convicted and sentenced the accused/appellant.

8. All the above three witnesses had given contradictory statement. P.W-1 Maadvi Somdi has stated in her examination-in-chief that a year back her mother-in-law Hidme died on account of attack made by Maadvi Hidmo, who is her brother in law in relation. On that day she was at her house. Her husband Budhram went to fetch water from *Naala*, her father in law Mangdu was sleeping in the house. Accused came holding axe in his hand and attacked her mother-in-law with the axe. He made five attacks-on her head, back of the head, cheek and on the back. She alone saw the accused/appellant attacking her mother-in-law no body else

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आदेश पत्रक (पूर्वानुबद्ध)

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saw him while attacking her mother-in-law. After attacking, accused left the house. When accused left from the place of incident, her husband came, however, he did not saw him attacking her mother-in-law. She informed her husband that Hidmo had attacked his mother Maadvi Hidme. In the cross-examination, she has made a contradictory statement and stated that she was sleeping in her room, her mother-in-law was sitting in the Verandah. When she came out of the room she saw that her mother-in-law was lying dead and nobody was standing there. Thereafter, when her husband came after fetching water, she said that who has murdered her mother-in-law. She was sleeping inside the room. She came out of the room after her mother-in-law was murdered. Thereafter on the Court question she said that her mother-in-law was visible from the place where she was sleeping. She saw the accused while coming & going and she also saw the accused while he was attacking. Again in the cross-examination she has stated that she was sleeping in the room, there was a wall between the place where she was sleeping and place where her mother-in-law was sitting in the parchi that place was not visible from the place where she was sleeping. Therefore, the evidence of this witness is inconsistent & contradictory in respect of the fact that she had witnessed the accused attacking her mother-in-law, therefore no implicit reliance can be placed on her evidence.

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आदेश पत्रक (पूर्वानुबद्ध)

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9. Husband of this witness P.W.-2 Maadvi Budhram in the cross-examination-in-chief had stated that when he came back after fetching water he saw accused carrying axe in his hand and was running. When he came out his mother was lying in dead condition and blood was oozing. His father was sleeping, he woke up when he asked him to awake. His father told him that Hidmo has committed murder of his mother with axe and thereafter informed the villagers. In the cross-examination he had stated that when he returned after fetching water he saw that his wife was sleeping with the child and he asked her to wake up. He asked his wife that 'my mother is lying dead let us go and see'. He had further stated that when he returned after fetching water, accused Hidmo was standing near his house.

10. On the question by counsel for the accused that when he returned after fetching water he was not knowing as to who murdered his mother, he replied –yes. Therefore the evidence of this witness is also not clear and cogent on the aspect that in fact he saw the accused running away carrying axe in his hand from his house.

11. P.W.-4 Maadvi Mangdu has stated that on the fateful day his daughter-in-law was at the house and she was sleeping. His wife was sitting in the verandah. He wake up after hearing the cries of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

his wife, went near her and saw that accused came out of the room carrying axe in his hand and went away pushing him. Thereafter he saw that there was mark of injury of axe, on the head, forehead and on the waist. In the cross-examination he has stated that he was sleeping and his son Budhram came and asked him to wake up, whereupon he woke and saw that his wife was dead.

12. In view of the inconsistent statement of these three witnesses there is no cogent clear evidence to the effect that any of these three witnesses saw the accused attacking the deceased or saw him running away from the place of occurrence carrying axe in his hand. Therefore, finding of the trial Court convicting and sentencing the accused/appellant under Section 302 of the IPC cannot be sustained as the same is not based on any legal evidence.

13. In the result the appeal succeeds, same is allowed. Accused/appellant is acquitted of the charge under Section 302 of the IPC and accordingly the conviction and sentence imposed upon him are set aside. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge